

Guidance for Industry

Implementation of Section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term “Catfish”

This guidance represents the agency's current thinking on acceptable common or usual names for fish bearing the name “catfish” that are not from the family *Ictaluridae*. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

On May 13, 2002, Public Law 107-171, entitled the Farm Security and Rural Investment Act of 2002 (FSRIA), became law. Section 10806 of the FSRIA amends section 403 (the food misbranding provision) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343) to provide that a food shall be deemed to be misbranded “[i]f it purports to be or is represented as catfish, unless it is fish classified within the family *Ictaluridae*.”

Prior Food and Drug Administration guidance (“[The Seafood List](#),” FDA’s Guide to Acceptable Market Names for Seafood Sold in Interstate Commerce 1993,” as updated) lists a number of fish other than those from the family *Ictaluridae* with the term “catfish” in their names. This prior guidance reflected what FDA believed were names for seafood that could be used by importers and domestic distributors and sellers consistent with the food naming provisions of the Act. New section 403(t) of the Act, however, overrides this guidance and precludes the use of the term “catfish” in labels or any other labeling, unless the fish is from the *Ictaluridae* family.¹

¹ This guidance supercedes FDA's January guidance and letter related to section 775 of Public Law 107-76, entitled "The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002."

In accordance with new section 403(t) of the Act, importers, domestic distributors, and sellers of fish from families other than *Ictaluridae*, who previously used the term "catfish" in labeling or on the label as part of the common or usual name of the fish, may no longer use that term, either when the fish are offered for import into the United States or distributed or sold in interstate commerce within the United States. Other names must be used.

The naming of food is addressed in section 403 of the Act. According to that section, a food is misbranded if, among other things, its labeling is false or misleading in any particular (section 403(a)(1) of the Act), it is offered for sale under the name of another food (section 403(b) of the Act), or its label fails to bear the common or usual name of the food, if any there be (section 403(i) of the Act). In accordance with section 403(i), those fish that have appropriate alternate common or usual names not containing the term "catfish" must use those names. A common or usual name is appropriate if the name of the fish complies in other respects with section 403 of the act and with the general principles set forth in 21 CFR 102.5. Importers, domestic distributors, and sellers of fish that do not have appropriate alternate common or usual names not containing the term "catfish" may consult the general principles set forth in 21 CFR 102.5, which provide useful guidance on how to develop another name.

21 CFR 102.5 provides, among other things, that a common or usual name:

- ?? Must accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients;
- ?? May be a "coined name," created for the purpose of naming the food; and
- ?? May not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name.

In applying those principles to this situation, FDA recommends that those who name the fish keep the following in mind:

- ?? To the extent possible, the name should be informative or descriptive to the consumer. An example of a descriptive name now in use is "orange roughy," which was developed

because the fish has an orange hue and has rough textured scales.

- ?? The name should not be deceptive or misleading as to the species designated. For example, the fish should not be named "halibut," a common or usual name already used to designate a different species. Further, the name should not have a misleading association with such attributes as color, flavor, value, or existing market forms. For example, "peanut butter fish" likely would be deceptive because the fish in question does not have attributes, such as flavor, reminiscent of peanut butter.
- ?? Names may be close to pre-existing common usage so long as they are adequately identifying or distinguishing, i.e., so that a consumer is not likely to confuse it with another fish. For example, the name "Flat Whiskered Fish" likely would be an acceptable replacement name for the fish currently listed in The Seafood List as "Flat Whiskered Catfish." However, "Sea Fish" or "Mekong Fish" would not likely be adequate replacements for "Sea Catfish" or "Mekong Catfish" (*Pangasius gigas*) because there are many fish in the sea and in the Mekong, and these names would not adequately identify or distinguish these fish to consumers. (In the case of Mekong Catfish, these fish also have been known as *Pangasius* Catfish; so a likely adequate replacement name could be *Pangasius* Fish). Additionally, coined names should avoid unusual spelling (e.g., Katfish) or splitting of syllables (e.g., Cat Fish) such that the name bears too close a resemblance to the name of another food.

¹. FDA tries to keep The Seafood List up-to-date and complete. However, there may be common or usual names that it does not contain.